

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 21ST MARCH 2007 / 30TH PHALGUNA 1928

Crl.MC.No. 538 of 2007()

CC.726/2003 of JUDL. MAGISTRATE OF FIRST CLASS COURT,
PARAPPANANGADI
.....

PETITIONER: ACCUSED

M.SHAHUL HAMEED, AGED 72 YEARS,
S/O MEERASAHIB, A.S.H.MANZIL,
KANNIYAKULANGARA, VEMBAYAM P.O.,
THIRUVANANTHAPURAM.

BY ADV. SRI.MOHAN JACOB GEORGE
SMT.P.V.PARVATHI
SMT.REENA THOMAS
SRI.TITUS THOMAS
SRI.L.RAM MOHAN

RESPONDENTS: COMPLAINANT

T.RUKIYA, W/O K.P.MOHAMEDALI,
K.P.HOUSE, TIRURANGADI,
CHEMMAD.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 21/03/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R. BASANT, J.

Crl.M.C.No. 538 of 2007

Dated this the 21st day of March, 2007

ORDER

The short grievance of the petitioner, who faced indictment in a prosecution under Section 138 of the N.I. Act, is that the exemption granted in his favour under Section 205 Cr.P.C. has been cancelled unnecessarily and unjustifiably by the learned Magistrate as per order dt. 18.1.2007.

2. Report of the learned Magistrate was called for. The learned Magistrate reports that exemption happened to be cancelled only because the accused person and his counsel were both absent on the days of posting. The order sheet has been placed before court for perusal. The exemption is seen cancelled on 18.1.07. On that day the complainant was absent. The Power of Attorney holder was present. There is no noting that the accused was not represented by his counsel. In fact the order dt. 18.1.07 in the order sheet reads as follows:

“18.1.07: Complainant absent. Power of Attorney holder present. Exemption of accused u/s. 205 Cr.P.C. cancelled. For evidence listed to 1.3.2007.”

3. Having gone through the order sheet maintained by the learned Magistrate, I do not find any justification in the mechanical, and what appears to be automatic, cancellation of exemption under Section 205 Cr.P.C. granted in favour of the accused. I am satisfied that the course adopted by the learned Magistrate is incorrect and not justifiable. Merely because the case is posted for evidence, exemption granted to an accused does not deserve to be mechanically cancelled. I am, in these circumstances, satisfied that cancellation of exemption was not justified and the said order warrants and deserves interference.

4. I do however note that the learned Magistrate has not issued any coercive process against the accused. In these circumstances it need only be directed that the cancellation of exemption shall stand set aside.

5. This Crl.M.C. is hence allowed. Cancellation of exemption under Section 205 Cr.P.C. shall stand set aside. The exemption shall continue. For reasons to be recorded, the learned Magistrate shall certainly be entitled to direct the accused persons to appear on any specified date of posting.

(R. BASANT)
Judge